product liability reform, NATO expansion, the Human Cloning Prohibition Act, funding for the Treasury Department—all in the effort to use that leverage.

Last year, of course, we had the obstruction of the Social Security lockbox—six times. We would go back to the same six times to make an issue out of it. Ed-Flex, the idea of giving more flexibility to education and letting people on the ground, in the States and on the school boards, have more determination as to what was done there, and bankruptcy reform—still in limbo.

We had delay in such critical issues as the elementary-secondary education bill. That is something that ought to be moved. Marriage penalty tax relief—it took a very long time. You can make decisions on things, but to try to change it by avoiding moving forward is a very destructive kind of operation. That is where we find ourselves right now, unfortunately.

The Ed-Flex bill, as I said, had to have five votes before we could break that. The lockbox legislation to protect Social Security, we went over and over that.

Much of it is the idea somehow if we can put everything off until after the first of the year, there will perhaps be another opportunity to do something different.

I think it is time for us to adjourn. I yield the floor.

Mr. DORGAN. Parliamentary inquiry, Mr. President?

The PRESIDING OFFICER. The Senator will state it.

Mr. DORGAN. Mr. President, I am wondering, the Senate reconvenes at 2 o'clock by previous order today, is that correct?

The PRESIDING OFFICER. At the hour of 2:15.

Mr. DORGAN. Mr. President, I shall not ask to extend morning business. But I ask consent I be recognized at 2:15 for 20 minutes of morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate will stand in recess until the hour of 2:15 p.m.

Thereupon, at 12:31 p.m., the Senate recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. BROWNBACK).

The PRESIDING OFFICER. In my capacity as a Senator from the State of Kansas, I suggest the absence of a quorum.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CRAIG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. CRAIG. Mr. President, I ask unanimous consent that the Senate be in a period for morning business until the hour of 3 p.m., with the time equally divided in the usual form.

The PRESIDING OFFICER. Is there objection?

Mr. DORGAN. Mr. President, by previous order, I am recognized for the next 20 minutes. The Senator from Idaho wishes to deal with the 20 minutes following that; is that correct?

Mr. CRAIG. Yes. The Senator from Idaho asks unanimous consent that the unanimous consent request he just made become active immediately following the time of the Senator from North Dakota.

The PRESIDING OFFICER. Without objection, it is so ordered.

Under the previous order, the Senator from North Dakota has the next 20 minutes. The Senator from North Dakota is recognized.

UNFINISHED BUSINESS ON SENATE AGENDA

Mr. DORGAN. Mr. President, I was listening to some of the discussion this morning before the Senate broke for the party lunches. I was especially interested in a couple of presentations about the progress some think the Senate has made in this Congress, and about why they believe the Senate is not making progress today or this week.

It reminds me of the story of the fly that landed on the nose of an ox. The ox, with the fly on its nose, went out for the entire day and plowed in the field. They came back to the village at night, and the villagers began applauding. The fly, still on the nose of the ox, took a deep bow and said to the villagers: We've been plowing.

That is sort of what I heard this morning—we've been plowing—when, in fact, this Senate, as all of us know, has not done the work we should have been doing for the American people.

I thought it would be interesting to describe what the agenda should have been and what we have done.

I will talk about some of the issues with which most Americans believe the Congress should be dealing: Common sense gun safety. For those who might be listening, I'm not talking about gun control; this is not in any way going to abridge people's Second Amendment right to own guns. This legislation will, however, close a loophole in the law that allows people to purchase guns at gun shows without having to get an instant check.

If you buy a gun in this country in a gun store, you must have your name run through an instant check system to find out whether you are a felon. That makes good sense. We should not sell guns to felons. The instant check system helps identify if someone trying to buy a gun at a gun store has been previously convicted of a felony and therefore should not be sold a weapon.

But guess what? Go to a gun show on a Saturday somewhere and you can buy a gun without an instant check being done. This does not make any sense. We want to close that loophole. We do not want to be selling guns at a gun show to a convicted felon. Yet we cannot get this common sense piece of legislation enacted in this Congress because it is considered radical or extreme by some. It is a very simple proposition: Close the gun show loophole to prevent felons from buying guns. We should get that done.

Or what about the Patients' Bill of Rights? Every day 14,000 patients are denied needed medicines; 10,000 are denied needed tests and procedures in this country. But we cannot pass a decent Patients' Bill of Rights because, in this Congress, we have people who stand with the big insurance companies rather than standing with patients.

I know it is inconvenient to some to hear about specific patients who have been denied needed care by their HMOs. I have talked about these patients at great length in the past because these folks are what the Patients' Bill of Rights is all about. It is about the woman who fell off a 40-foot cliff while she was hiking in the Shenandoah Mountains. She fell 40 feet, broke several bones and was hauled unconscious into a hospital emergency room on a gurney. After surviving her life-threatening injuries, she was told by her managed care organization that it would not cover her medical care in the emergency room because she didn't have prior approval to go to the emergency room. This is a woman who was hauled into the emergency room unconscious. That is the sort of thing people are confronting these days.

Senator REID and I had a hearing in Nevada on this subject. At that hearing, a woman stood up and talked about her son. Her son is dead now. He died last October at 16 years of age. He was battling cancer and needed a special kind of chemotherapy to give him a chance to save his life. Unfortunately, his insurance company denied him this care. He not only had to battle cancer, but he also had to battle the insurance company that wouldn't cover the care he needed. His mother held up a very large picture of her son at the hearing and, with tears in her eyes, she cried as she told us: As my son lay dying, he looked up at me and said, Mom, I just don't understand how they could do this to a kid.

Kids who are battling cancer ought not have to battle the insurance companies or HMOs. Yet that is what is happening too often in this country.

We propose to pass a Patients' Bill of Rights that is very simple. It says every patient in this country has a right to know all of his or her options for medical treatment, not just the cheapest option. It says that if you have an emergency and go to an emergency room, you have a right to care in that emergency room. It says that if you have cancer and your employer or your spouse's employer changes health plans, you have a right to continue seeing the oncologist who has been helping you to fight that cancer. But we can't get a Patients' Bill of Rights enacted because when it comes time to say who you stand with—the patients who ought to have certain rights or the big insurance companies that in too many cases have denied those rights—too many Senators say: We stand with the insurance companies.

The last time we debated this issue on the floor, about a month ago, my colleague from Oklahoma, Senator NICKLES, offered an amendment that he called a Patients' Bill of Rights. He accomplished his purpose, I suspect, because the next day the paper said the Senate passed a Patients' Bill of Rights. However, what the Senate really passed was a ''patients' bill of goods,'' not a Patients' Bill of Rights.

I thought it interesting that Dr. GANSKE, a Republican Congressman, wrote this letter:

Heaven forbid that any member of Congress would ever vote on a bill they haven't had time to read! Heaven really forbid that a member would vote on a bill that their staff hasn't seen!

Yet, that is exactly what happened two weeks ago on the floor of the Senate when the Nickles HMO amendment was brought up for a vote.

People are just now beginning to realize what was in that legislation. To help you understand the fundamental flaws of the Nickles bill, I am including a copy of an analysis of the Senate's patient's bill of rights that was added to the FY 2001 Labor/HHS legislation.

This Senate legislation eliminates virtually any meaningful remedy for most working Americans and their families against death and injury caused by HMOs.

This is Dr. GANSKE, a Republican Congressman, making this reference to the Nickles bill. He then includes a rather lengthy analysis.

Mr. President, I ask unanimous consent to print Dr. GANSKE's letter and the analysis in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

JULY 13, 2000.

Hon. BYRON DORGAN,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR DORGAN: Heaven forbid that any member of Congress would ever vote on a bill they haven't had time to read! Heaven really forbid that a member would vote on a bill that their staff hasn't seen!

Yet, that is exactly what happened two weeks ago on the floor of the Senate when the Nickles HMO amendment was brought up for a vote. The Norwood-Dingell-Ganske bipartisan Consensus Managed Care Reform Act of 1999 had been public for months before the House voted. Not so with the Nickles HMO bill.

People are just now beginning to realize what was in that legislation. To help you understand the fundamental flaws of the Nickles bill, I am enclosing a copy of an analysis of the Senate patient's bill of rights that was added to the FY 2001 Labor/HHS legislation.

This Senate legislation eliminates virtually any meaningful remedy for most working Americans and their families against death and injury caused by HMOs. Please read the analysis by Professors Rosenbaum, Frankford, and Rosenblatt as to why the Nickles bill is worse than the status quo!

Sincerely,

GREG GANSKE,
Member of Congress.

JULY 6, 2000.

HOUSE OF REPRESENTATIVES,
Rayburn House Office Building, Washington, DC.

DEAR SIR: At your request we have reviewed the Senate patients' bill of rights legislation that was inserted into the FY 2001 Labor/HHS legislation last week.

Rather than expanding individual protections, the measure would appear to undo state law remedies for medical injuries caused by managed care companies' treatment decisions and delays. In this regard, the bill runs directly contrary to United States Supreme Court's reasoning in its recent decision in *Pegram* v. *Herdrich,* which seems to reaffirm the authority of states to determine medical liability policy, and underscores the appropriateness of state courts as the forum for medical liability cases.

The displacement of state medical liability law in favor of a new federal medical liability remedy might have some policy validity, were the new law fair and just. But the remedy set forth in the Senate bill is compromised by an unprecedented range of limitations, exceptions, and defenses and appears to leave injured persons with no remedy at all.

In sum, in the name of patient protection, the Senate legislation appears to eliminate virtually any meaningful remedy for most working Americans and their families against death and injury caused by managed care companies.

CONCLUSION

The central purpose underlying the enactment of federal patient protection legislation is to expand protections for the vast majority of insured Americans whose health benefits are derived from private, non-governmental employment, and who thus come within the ambit of ERISA. Not only would the Senate measure not accomplish this goal, but worse, it appears to be little more than a vehicle for protecting managed care companies from various forms of legal liability * * *

* * * * *

By classifying medical treatment injuries as claims denials and coverage decisions governed by ERISA, the Senate bill insulates managed care companies from medical liability under state law.

Section 231 of the Senate bill amends ERISA §502 to create a new federal cause of action relating to a ''denial of a claim for benefits'' in the context of prior authorization. The bill defines the term ''claim for benefits'' as a ''request * * * for benefits (including requests for benefits that are subject to authorization of coverage or utilization review) * * * or for payment in whole or in part for an item or service under a group health plan or health insurance coverage offered by a health insurance issuer in connection with a group health plan.'' ERISA §503B, as added. Thus, the bill would classify prior authorization denials as ''claims for benefits'' that are in turn covered by the new federal remedy. Federal remedies under ERISA §502 preempt all state law remedies.

This classification would have profound effects, particularly in light of the Supreme Court's recent decision in *Pegram* v. *Herdrich.* As drafted, the Senate bill arguably would preempt state medical liability law as applied to medical injuries caused by the wrongful or negligent withholding or necessary treatment by managed care companies. The bill thus would reverse the trend in state law, which has been to hold managed care companies accountable for the medical injuries they cause, just as would be the case for any other health provider.

In recent years courts that have considered the issue of managed care-related injuries have applied medical liability theory and law to managed care companies in a manner similar to the approach taken in the case of hospitals. Thus, like hospitals, managed care companies can be both directly and vicariously liabile for medical injuries attributable to their conduct. In a managed care context, the most common type of situation in which medical liability arises tends to involve injuries caused by the wrongful or negligent withholding of necessary medical treatment (i.e., denials of requests for care).

State legislatures also have begun to enact legislation to expressly permit medical liability actions against managed care companies. The best known of these laws is medical liability legislation enacted in 1997 by the state of Texas and recently upheld in relevant part against an ERISA challenge by the United States Court of Appeals for the Fifth Circuit.

In *Pegram* v. *Herdrich,* the Supreme Court implicitly addressed this question of whether managed care state liability law should cover companies for the medical injuries they cause. The Court decided that liability issues do not belong in federal courts and strongly indicated its view that in its current form ERISA does not preclude state law actions. It is this decision that the Senate bill would appear to overturn.

In Pegram, the Court set up a new classification system for the types of decisions made by managed care organizations contracting with ERISA plans. The first type of decision according to the Court is a ''pure'' eligibility decision that, in an ERISA context, constitutes an act of plan administration and thus represents an exercise of ERISA fiduciary responsibilities. Remedies for injuries caused by this type of determination would be addressed under ERISA §502 (which of course currently provides for no remedy other than the benefit itself).

The second type of decision is a ''mixed'' eligibility decision. While the Court's classification system contains a number of ambiguities, it appears that in the Court's view, this second class of decision effectively occurs any time that a managed care company, acting through its physicians, exercises medical judgment regarding the appropriateness of treatment. Such decisions, as medical decisions rather than pure eligibility decisions, are not part of the administration of an ERISA plan and thus not part of ERISA's remedial scheme because, according to the

Court, in enacting ERISA, Congress did not intend to displace state medical liability laws. The Court thus strongly indicated that these claims are not preempted by ERISA and may be brought in state court. In the Court's view, these mixed decisions represent a ''great many, if not most'' of the coverage decisions that managed care companies make.

The Senate bill would appear to reverse Pegram by effectively classifying all prior authorization determinations as §502 decisions, without any regard to whether they are ''pure'' or ''mixed''. As a result, state medical liability laws that arguably now reach mixed decisions apparently would be preempted, leaving individual physicians, hospitals, and other health providers as the sole defendants in state court. Under the complete preemption theory of §502, remedies against managed care virtually impossible standard to prove and particularly egregious in light of the fact that plaintiffs cannot even bring such an action unless they have gotten a reversal of the denial at the external review stage. Even where they have proven that a company wrongfully withheld treatment, plaintiffs can recover nothing for their injuries without taking the level of proof far beyond what is needed to win at the external review stage. Virtually all injuries would go uncompensated.

A plaintiff will be forced to show ''substantial harm'', defined in the law as loss of life, significant loss of limb or bodily function, significant disfigurement or severe and chronic pain. This definition arguably would exclude some of the most insidious injuries, such as degeneration in health and functional status, or loss of the possibility of improvement, that a patient could face as a result of delayed care, particularly a child with special health needs. In *Bedrick* v. *Travelers Insurance Co.*, the managed care company cut off almost all physical and speech therapy for a toddler with profound cerebral palsy. The Court of Appeals, in one of the most searing decisions ever entered in a managed care reversal case, found that the company had acted on the basis of no evidence and with what could only be described as outright prejudice against children with disabilities (the managed care company's medical director concluded that care for the baby never could be medically necessary because children with cerebral palsy had no chance of being normal).

The consequences of facing years without therapy were potentially profound for this child: the failure to develop mobility, the loss of the small amount of motion that the child might have had, and the enormous costs (both actual and emotional) suffered by the parents. Arguably, however, none of these injuries falls into any of the categories identified in the Senate bill as constituting ''substantial harm.''

The maximum award permitted is $350,000, and even this amount is subject to various types of reductions and offsets. This limitation on recovery will make securing representation extremely difficult.

No express provision is made for attorneys fees. Were the new right of action to be interpreted not to include attorneys fees this would be a radical change in the ERISA statute, and one that would create a massive barrier to use of the new purported ERISA remedy. To mount a case proving bad faith denial of treatment that caused substantial injury is an enormously expensive proposition. The limitations on is enormous. In *Humana* v. *Forsythe* the United States Supreme Court held RICO applicable to a managed care company that had systematically defrauded thousands of health plan members out of millions of dollars in benefits by systematically lying to members about the proportional cost of the treatment they were being required to bear (the policy was a typical 80/20 payment policy, but because of secret discounts that were not disclosed to members, group policy holders in many cases were paying for the majority of their care). This is racketeering, pure and simple, and thus represents a classic type of RICO claim. To use a patient protection bill potentially to insulate managed care companies against these types of practices is unwise at best.

CONCLUSION

The central purpose underlying the enactment of federal patient protection legislation is to expand protections for the vast majority of insured Americans whose health benefits are derived from private, nongovernmental employment, and who thus come within the ambit of ERISA. Not only would the Senate measure not accomplish this goal, but worse, it appears to be little more than a vehicle for protecting managed care companies from various forms of legal liability under current law. Viewed in this light, Congressional passage of the Senate bill would be far worse than were Congress to enact no measure at all.

Mr. DORGAN. We cannot get a real Patients' Bill of Rights passed. How about a Medicare prescription drug benefit? Well, we are not able to get that done either. We have been busy providing tax cuts, an estate tax repeal and a change in the marriage tax penalty. The head of OMB said yesterday that, under the recent tax proposals passed by the majority party, the top 1 percent of the income earners in this country will get more tax cuts than the bottom 80 percent combined.

This explains why the upper income folks, those with the largest estates and the highest incomes, rally around these tax cut proposals. There should really be no difference between the parties on the estate tax. Those of us in the minority believe we ought to repeal the estate tax for family farms and small businesses and allow a reasonable accumulation of wealth for a family. We said if you have up to $4 million, you should pay no estate tax. For a family farmer or small business, you can have assets up to $8 million and pay no estate tax at all. But that wasn't good enough for the majority. The majority party said, we must also fight to eliminate the tax burden on the estates of the Donald Trumps of America who will die with half a billion or a billion or several billion dollars. At what price? What else could we do with the money that the majority wants to use to relieve the tax burden on the wealthiest estates in America?

Perhaps we could use it to reduce the Federal debt. It seems to me that is probably a better priority than providing a tax cut for the estates of billionaires. Or we could use the money for a prescription drug benefit for Medicare, perhaps for school modernization, or to hire more teachers to lower class sizes. There are a whole series of proposals that might represent a better alternative than deciding we must use this revenue to relieve the tax burden on the largest estates in this country.

Is a prescription drug benefit in the Medicare program important? It is quite clear that if we were creating the Medicare program today, we would provide coverage for prescription drugs through Medicare. Senior citizens make up twelve percent of our population, but they consume one-third of all the prescription drugs used in this country. They reach a period in their life where they need to maintain their health, and miracle drugs that did not exist 30 years ago now exist to extend their lives. In the 20th century, we increased the life expectancy in America by 30 years. A part of the reason for that is better nutrition, better living conditions, better education about healthy living, but part of the reason is also miracle drugs.

It is not unusual for a senior citizen to be taking two, four, five, and in some cases, ten or twelve different prescription drugs to deal with their health challenges. Those prescription drugs are enormously costly. The price is increasing every year. Last year, spending on prescription drugs in America increased 16 percent in 1 year. The year before the increase was about the same. Many senior citizens just can't afford these expenses.

I have held hearings through the Democratic Policy Committee in five or six States on this subject. I have had senior citizen after senior citizen tell me that, when going shopping, they first must go to the pharmacy in the back of the grocery store to purchase their prescription drugs. Only after they have bought their medications do they know how much money they have left to purchase food. It is a common story all across the country. So should we add a prescription drug benefit to the Medicare program? Of course, we should. Will we? We won't do it unless we get some cooperation from a majority party that believes this is not a priority for the country.

We believe it is. We have a plan that will provide a prescription drug benefit to Medicare beneficiaries in a way that is cost-effective, in a way that will tend to push down the prices of prescription drugs and provide an opportunity for coverage for senior citizens who elect to have this benefit. That ought to be part of the agenda in this Congress, but we can't get it done.

Or what about school modernization? This country has had such a wonderful 20th century, especially the last half of the century following the Second World War. Those who fought for America's freedom in World War II came back to this country, and began careers, got married, had children. They built schools all over America 50 years ago. Many of those schools are

now in disrepair. These schools need renovation or replacement.

Not only are many of these schools desperately in need of modernization and renovation, but there is also a need to reduce class sizes from 28 or more, in some classes, down to 18 kids or fewer.

We know the quality of education is better when there are smaller class sizes. We know it is better for kids' education when they are going through the door of a modern schoolroom that all of us can be proud of. As I have said many times—and if it is tiresome to people, it doesn't matter to me—it is hard to go to the Cannon Ball Elementary School in North Dakota and have a third grader such as Rosie Two Bears say: Mr. Senator, will you build us a new school? That school has 150 students, one water fountain, and two bathrooms. Some of the classrooms have to be evacuated periodically because of raw sewage seeping up through the floors. Part of the building is 90 years old and has largely been condemned.

Are we proud of sending that young girl through that classroom door? I don't think so. We can do better. Perhaps that is more important than providing relief from the estate tax burden of somebody who dies with $1 billion. Instead of being able to leave only $600 million to their heirs, they get to leave all of the $1 billion because the majority party says that is their priority. Their priority is to give tax cuts to the top 1 percent of the American income earners that are more than the tax cuts we are going to give to all of the bottom 80 percent. That is their priority. My point is that we ought to be focusing on other priorities.

So this morning when we had people shuffle over to the floor of the Senate and talk about what a wonderful job this Congress has done and how we are stalled now because the Democrats somehow don't want to do anything, I just had to come over here and correct the record. One of the things hanging up work today is that there are people who have been nominated as Federal judges whose nominations have been before the Senate for 3 years without having been brought to the floor for a vote. We would like that to happen. That is considered unreasonable.

I say to those who think this Congress has a wonderful record that this is a Congress of underachievers. We have a little time left. We have this week and September and the first week of October. This is what we have to do. We have a Patients' Bill of Rights that we ought to pass. We have gun safety legislation that we ought to pass. We ought to close the gun show loophole. We ought to pass an increase in the minimum wage. The fact is, those working at the bottom rung of the economic ladder in this country have lost ground. Everybody here is so worried about providing tax breaks to the top income earners. What about providing some help to those at the bottom of the economic scale? These people get up and get dressed and have breakfast in the morning and go out and work hard, and they are trying to raise a family on a minimum wage that has not kept pace with inflation. We ought to do something about that.

We ought to provide a Medicare drug benefit. We can do that to address the needs of our senior citizens who are now struggling with health problems and just to make ends meet, only to discover that, in their twilight years, the medicines they need to make life better are financially out of reach for them.

Last week, we passed a piece of legislation that says maybe we ought to be able to access the more reasonable prescription drug prices on exactly the same prescription drugs that exist in Canada and elsewhere. The same companies produce the same pill, put it in the same bottle, and they sell it for a third of the price up in Winnipeg, Canada, or, for that matter, in virtually any other country in which they sell these drugs.

Last week, I suggested that I would like to see just one Senator stand up—in fact, I renew the challenge to anybody who wants to come to the floor—on the floor of the Senate and say that it is fair for American consumers to pay significantly more for the same exact drug than consumers in other countries. I will give any Senator who wants to do this the pill bottles; I held up several last week. The bottle of the prescription drug sold in the U.S. costs $3.82 a pill and the same drug in the same bottle, made by the same company, in the same manufacturing plant, sold in Canada costs only $1.82 a pill. The U.S. consumer pays $3.82 and the Canadian consumer pays $1.82. I want to see a Senator, just one Senator, stand up and hold these bottles and say, yes, this is fair to my constituents and, yes, this price inequity is something we ought to support. Of course, no one will because nobody believes that is fair. That is another issue that we have to address. We were able to get some legislation through the Senate and, of course, the pharmaceutical industry has indicated that it fully intends to kill that in conference. We will see.

So there is a lot left for this Senate to do. We have, at the end of this week, a break for the two national conventions, and then in September and October we will see the end of the 106th Congress. All legislation introduced between January of last year and now will eventually die, unless it is passed by this Congress, and we will have to start over again next year. So the questions of whether this is an effective Congress and whether this Congress creates a record any of us can be proud of are going to be answered in the next few months. Are we able to address the issues that the American people care about? Will the majority party stop obstructing on these issues? Will they decide a Patients' Bill of Rights should be passed by Congress? If so, let's do it soon. Will we be able to address the issue of reasonable gun safety measures, increasing the minimum wage, adding a drug benefit for Medicare, and school modernization? Those and other issues, it seems to me, are central to an agenda that will strengthen and improve this country. We will see in the coming days exactly what the 106th Congress decides it wants to leave as its legacy.

One of the great things about this democracy of ours is that the majority rules. That is certainly true in the Senate. They control the schedule. That is why we are now in morning business in the afternoon. Only in the Senate can you be in morning business in the afternoon, I guess. But we are not debating an appropriations bill, and we should be. There aren't enough people wanting to bring judges to the floor for confirmation and so on.

The point is this: The majority party has a choice to decide which of these issues and how many of them they want this Congress to adopt. I hope it will decide very soon that it chooses to join us and say these are the issues that matter to the American people, and these are the issues the 106th Congress shall embrace in the final weeks of this Congress.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

JUDICIAL NOMINATIONS

Mr. HATCH. Mr. President, for the last several weeks, I have listened as some of my colleagues have, with escalating invective, expressed repeatedly their dismay about the manner in which Senate Republicans have processed President Clinton's judicial nominees. That some would accuse the Senate majority of failing to act in good faith strikes me as ironic, given the recent reckless statements made by President Clinton and members of the all-Democratic Congressional Black Caucus. I already have made my views on their reckless statements known and will not repeat them again here.

Some of my colleagues like to talk about proceeding in good faith, but they ignore the fact that there is much legislation with broad, bi-partisan support that is at a standstill because